

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

HENRY EARL PATTERSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case Number CIV-04-963-C
	)	
RON WARD,	)	
	)	
Respondent.	)	

**MEMORANDUM OPINION AND ORDER**

On April 29, 2005, after review of the Report and Recommendation of Magistrate Judge Bana Roberts and Petitioner's responses thereto, the Court determined Petitioner had filed a mixed Petition. The Court identified those claims which were properly exhausted and directed Petitioner to file an Amended Petition raising only those claims within 20 days or face dismissal of his case. The Court's time limit has passed and Petitioner has failed to file the required amendment.

Accordingly, the Court finds Petitioner seeks to pursue a Petition containing both exhausted and unexhausted claims. Pursuant to 28 U.S.C. 2254(b) and Rose v. Lundy, 455 U.S. 509 (1982), this Court cannot consider the merits of Petitioner's claims and the case is DISMISSED. A separate judgment will enter dismissing the case without prejudice.

IT IS SO ORDERED this 31st day of May, 2005.

  
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ROBIN J. CAUTHRON  
United States District Judge